Supreme Court, U.S.
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No. 04-570

In The

Supreme Court of the United States

MARY MARTIN,

Petitioner,

v.

BOYD GAMING CORPORATION d/b/a
M/V TREASURE CHEST CASINO
and TREASURE CHEST CASINO, LLC,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can a court considering an admiralty and Jones Act case ignore the dictates of 1 U.S.C. § 3 in determining what is a vessel "in navigation" and rely upon an inherently, non-uniform state statute in doing so, thus destroying the harmony and uniformity of the general maritime law?

2. Even if not a vessel "in navigation" for purposes of the Jones Act, can a United States Coast Guard inspected and fully operational, self-propelled, passenger vessel, which is fully manned with a United States Coast Guard licensed Master and marine crew and which remains on the navigable waters of the United States subject to the perils of the sea, be considered a "vessel" for purposes of 1 U.S.C. § 3 making it subject to claims for "vessel" negligence under the general maritime law?

PARTIES TO THE PROCEEDINGS

All parties to the proceedings are listed in the caption of the case.

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OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Louisiana granting defendants' motion for summary judgment is reported at 252 F.Supp.2d 321 and is reprinted here as Appendix 5. The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 374 F.3d 375 and is reprinted here as Appendix 1. The unreported order by the United States Court of Appeals for the Fifth Circuit denying a petition for rehearing is reprinted here as Appendix 12.

JURISDICTION

The United States District Court for the Eastern District of Louisiana had subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1333, as plaintiff claimed seaman's remedies under the Jones Act, 46 U.S.C. § 688, and the general maritime law. The United States Court of Appeals for the Fifth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and Rule 4(a)(2) of the Federal Rules of Appellate Procedure, as well as 28 U.S.C. § 1292(a)(3), as the district court issued final, appealable judgments, dismissing plaintiff's Jones Act and general maritime law claims. The Fifth Circuit Court of Appeals issued the opinion below on July 8, 2004. The Fifth Circuit Court of Appeals denied a request for rehearing on August 6, 2004. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 3 of the Rules of Construction Act provides in relevant part:

> The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

1 U.S.C. § 3.

The Jones Act, 46 U.S.C. § 688(a), provides in relevant part:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply. . . .

Section 2 of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 902, provides in relevant part:

> When used in this Act -
>
> * * *
>
> (3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include –
>
> * * *

> (G) a master or member of a crew of any vessel. . . .

33 U.S.C. § 902(3)(G)

Section 5(b) of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 905, provides in relevant part:

> (b) Negligence of vessel –
>
> In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel. . . .

33 U.S.C. § 905(b)

Section 66 of Louisiana Revised Statute, Title 27, Chapter 4 provides in relevant part:

> A. Notwithstanding any provision in this Chapter to the contrary, for purposes of this Section any riverboat licensed to conduct gaming in the parish of the official gaming establishment, except as provided in Subsection B of this Section, shall not be permitted to conduct gaming while docked and shall be required to conduct cruises and excursions as provided in R.S. 27:65(B)(1) as in effect January 1, 1997. . . .

La. R.S. 27:66(A).

Section 65 of Louisiana Revised Statute, Title 27, Chapter 4 provides in relevant part:

> B. Gaming shall be conducted aboard riverboats, subject to the following requirements:

> (1)(a) In the parish of the official gaming establishment, except as provided in R.S. 27:66, no gaming may be conducted while a riverboat is docked. . . .

La. R.S. 27:65(B)(1)(a).

STATEMENT OF FACTS

1. The M/V TREASURE CHEST CASINO – A Traditional, Conventional Vessel

The M/V TREASURE CHEST CASINO is a 213 ft. fully operational, self-propelled, cruising casino ship with a steel hull, raked bow, bilge pumps, ballast tanks, galley, wheelhouse, sea valves, sea chests and strainers, navigational equipment, emergency evacuation plans (EEP), fire dampers, escape hatches, fuel tanks, station bill, stability letter, MARPOL placards, master's logs, radio logs, steering alarms, sprinkler systems, and a dual independent power source for air compressors, pumps and alarms relating to the sprinkler system. It is certified for the carriage of 1725 passengers. It is propelled by twin diesel powered Z-drives, bowthruster, and a diesel-hydraulic powered paddlewheel. It is a traditional, conventional vessel.

The vessel is equipped with 1945 life preservers, two rescue boats, six ring buoys, and until recently, four inflatable rafts. It is equipped with two fire pumps, eight fire axes, 1350 feet of fire hose, two fixed CO_2 fire extinguishing systems, one in the engine room and the other in the emergency generator room, and nearly 40 hand portable and semi-portable fire extinguishers. The vessel

regularly conducts fire and man overboard drills as required by the United Stated Coast Guard.

The vessel is required by the United States Coast Guard to be manned with a full-time navigational crew consisting of 1 master, 1 licensed mate, 4 able seamen, 4 ordinary seamen, 1 chief engineer, 1 oiler, 3 watchmen, and 6 security personnel whose duties include passenger safety, crowd control, lifesaving and firefighting. The Captain performs all of the duties indigenous to a ship's Captain. He periodically fires the engines, conducts man overboard and fire drills, maintains rescue equipment, such as lifeboats, prepares the vessel for Coast Guard inspections, performs required maintenance, and directs "casting off" of the lines and steerage of the vessel when the vessel engages in its periodic, albeit short, voyages. These are the duties that are customarily performed by a ship's Captain. In addition to the navigational crew, the vessel's Certificate of Inspection allows it to carry "179 other persons in the crew," which include gaming personnel like Petitioner Mary Martin.

Simply stated, the vessel would be in violation of the U.S. Coast Guard's Certificate of Inspection without a captain and marine crew and therefore, in non-compliance with Louisiana's riverboat gaming laws. Consequently, the M/V TREASURE CHEST CASINO would not, and could not, be in operation without its captain and crew.

The vessel is secured to a floating dock (entertainment barge) with three sets of mooring lines that can be easily cast off to sail. The only thing different now is that, since the vessel owner elected to pay an increased franchise fee, the vessel is not required to conduct "gaming cruises." However, the vessel can, and still does, make lawful,

periodic voyages – but now it is done without paying customers aboard. As recently as June 4 and 5, 2002, only eight months after Martin's accident, the vessel made two independent voyages so that her berth could be deepened. If a decision was made to sail or to move the vessel to a different locale, the only impediment would be the vessel's mooring lines.

2. Louisiana's Riverboat Gaming Laws – Non-Uniformity on Navigable Waters

Between September of 1994 and April 1, 2001, the M/V TREASURE CHEST CASINO conducted gaming cruises on the navigable waters of Lake Pontchartrain in accordance with Louisiana's riverboat gaming laws. During that time, defendants concede that Martin was considered a Jones Act seamen due to her substantial connection to the M/V TREASURE CHEST CASINO.

During the first extraordinary legislative session for the year 2001, the Louisiana legislature amended Louisiana's gaming control laws to allow some, but not all, casino riverboat operators to remain dockside while conducting gaming activities in exchange for an increased franchise fee being paid to the state of Louisiana. Since that time, or April 1, 2001, defendants allege to have conducted gaming activities exclusively while docked at its berth in Lake Pontchartrain. As such, defendants no longer consider any of its employees, including its Coast Guard licensed Master and marine crew, to be seamen with corresponding benefits of the Jones Act or general maritime law.

La. R.S. 27:66(A) and 27:65(B)(1)(a), while allowing the M/V TREASURE CHEST CASINO to remain dockside

on Lake Pontchartrain during gaming operations, specifically prohibits other riverboat casinos on the same navigable waters from conducting gaming while docked.

La. R.S. 27:66(A) provides in relevant part:

> A. Notwithstanding any provision in this Chapter to the contrary, for purposes of this Section any riverboat licensed to conduct gaming in the parish of the official gaming establishment, except as provided in Subsection B of this Section, **shall not be permitted to conduct gaming while docked and shall be required to conduct cruises and excursions** as provided in R.S. 27:65(B)(1) as in effect January 1, 1997. . . . (Emphasis supplied).

La. R.S. 27:65(B)(1)(a) provides in relevant part:

> B. Gaming shall be conducted aboard riverboats, subject to the following requirements:
>
> (1)(a) In the parish of the official gaming establishment, except as provided in R.S. 27:66, **no gaming may be conducted while a riverboat is docked**. . . . (Emphasis supplied).

(*See* Appendix 14-18). Consequently, crew members on a riverboat in the parish of the official gaming establishment (Orleans Parish), which is less than five nautical miles away from the M/V TREASURE CHEST CASINO and which sits on the same body of water facing the same perils of maritime employment, continue to enjoy coverage under the Jones Act and general maritime law. Thus, uniformity of the maritime law no longer exists upon the

navigable waters of Lake Pontchartrain due to the inherently, non-uniform riverboat gaming laws of Louisiana.

3. Martin's Duties Aboard the Vessel

Martin was hired on February 6, 1995 as a cocktail waitress to serve aboard the M/V TREASURE CHEST CASINO. She served in that capacity for a period of almost seven years, exclusively aboard the M/V TREASURE CHEST CASINO, from her hire date until the date of her injury, October 7, 2001. In addition to her duties as a waitress, Martin also was required to assist the marine crew in evacuating the vessel during fire drill and emergency procedures. She was required to go to a designated station and help passengers don life preservers and assist them to the safest route of egress from the vessel, or if unavailable, to the nearest refuge areas which are the upper and Texas decks.

On the date of her accident, upon embarking onto the loading dock, Martin slipped and fell in an unusually large puddle of grease or cooking oil, striking the ground flat on her back and head, severely injuring her neck, back and arms, rendering her totally disabled. The duty to maintain the loading dock as a safe means of ingress to the vessel where Martin fell was under the direct care, control and supervision of the vessel's Master and marine crew.

REASONS FOR ALLOWANCE OF THE WRIT

In relying upon Louisiana's non-uniform gaming statutes, the United States Court of Appeals for the Fifth Circuit ruled that the M/V TREASURE CHEST CASINO

was not a vessel "in navigation" for purposes of the Jones Act, and therefore not a "vessel" for purposes of the general maritime law. In doing so, the Fifth Circuit failed to analyze separately the issues of "vessel" status under the general maritime law and vessel "in navigation" under the Jones Act. This decision conflicts with 1 U.S.C. § 3, this Court's decision in *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995), and decisions from the First, Second, and Seventh Circuit Courts of Appeals and earlier decisions of the Fifth Circuit Court of Appeals as to what constitutes a "vessel" for purposes of admiralty jurisdiction. This decision also conflicts with this Court's decision in *Chandris* as to what constitutes a vessel "in navigation" for purposes of the Jones Act and in interpreting Jones Act seaman status.

According to the 1999 National Gambling Impact Study Commission, there are over one hundred riverboat and dockside casinos in the six states of Illinois, Iowa, Indiana, Louisiana, Missouri and Mississippi. The term "riverboat casino" is defined by the NGISC as any "boat that is capable of self-contained operation away from land whether or not it ever leaves the dock." Conversely, "dockside casinos" are those structures that "float on water but are permanently moored." As the term is used, this is a "riverboat casino" case as opposed to a "dockside casino" case. Each of the aforementioned separate states has its own set of laws regulating the movement of these riverboat casinos while patrons are on board, none of which are uniform, thereby lending to the struggle by the lower courts over the issues presented herein. By allowing certiorari in this case, this Court can give clear direction to the lower courts in determining whether these riverboat casinos are "vessels" subject to the court's admiralty

jurisdiction, a decision that will ultimately affect thousands of riverboat gaming industry workers across this country.

This Court recently granted certiorari in the case of *Stewart v. Dutra Construction Co.*, 230 F.3d 461 (1st Cir. 2000), *cert. granted*, No. 03-814 (*Stewart I*), to determine whether a special purpose watercraft (such as a dredge) is a Jones Act "vessel." Since the Fifth Circuit Court of Appeals applied a special purpose vessel analysis to this Jones Act case, Martin submits that this Court's decision in *Stewart I* will directly affect the outcome of the present case as to whether the M/V TREASURE CHEST CASINO is a "vessel" for purposes of the Jones Act. Whether the M/V TREASURE CHEST CASINO is a "vessel" under the general maritime law subject to claims of vessel negligence still needs to be resolved by this Court.

I. The Fifth Circuit erred in declaring that, because a vessel was not "in navigation" for purposes of the Jones Act, it simply was not a "vessel" for purposes of the general maritime law. This Court should resolve the conflict among Congress, this Court's decision in *Chandris*, and decisions by the First, Second, Fifth and Seventh Circuit Courts of Appeals as to what constitutes a "vessel" under 1 U.S.C. § 3 and the general maritime law.

This Court recently reaffirmed its deference to Congressional statutes affecting the general maritime law in *Garris vs. Norfolk Shipbuilding Dry Dock Corp.*, 532 U.S. 811 (2001), where it held, " . . . even in admiralty, 'we have no authority to substitute our views for those expressed by

Congress in a duly enacted statute.'" *Garris, supra, citing Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618 (1978).

Under the general maritime law, a vessel is "every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water." This is the "capability" test for vessel status. 1 U.S.C. § 3. "A craft need not be actually engaged in navigation or commerce in order to come within the definition of 'vessel.' The question is one of residual capacity." *McCarthy v. The Bark Peking*, 716 F.2d 130, 134 n.2, 135 (2nd Cir 1983), *cert. denied*, 465 U.S. 1078, 104 S.Ct. 1439, 79 L.Ed.2d 760 (1984).

Even if not a vessel "in navigation" for purposes of the Jones Act, "vessels" do remain subject to claims for vessel negligence under 33 U.S.C. § 905(b) and the general maritime law. *See Howard v. Southern Illinois Riverboat Casino Cruises,* 364 F.3d 854 (7th Cir. 2003), *cert. denied* (U.S. Oct. 18, 2004); *Stewart v. Dutra Construction Co.,* 343 F.3d 10 (1st Cir. 2003) (*Stewart II*). The issue of whether a vessel is also "in navigation" under the Jones Act is a different issue from the question of vessel status under the general maritime law. *Hall v. Hvide Hull No. 3*, 746 F.2d 294 (5th Cir. 1984), *cert. denied*, 474 U.S. 820, 106 S.Ct. 69, 88 L.Ed.2d 56 (1985). *See also Ducrepont v. Baton Rouge Marine Enterprises, Inc.*, 877 F.2d 393 (5th Cir. 1989) wherein the Fifth Circuit considered vessel status **separately** under the Jones Act and Section 905(b) since the term "vessel" in the LHWCA is not synonymous with the term "vessel" pursuant to the Jones Act.

In *Howard, supra*, despite finding that the *Players II*, a riverboat gaming vessel not at all unlike the M/V TREASURE CHEST CASINO, was not a vessel "in navigation" for

purposes of the Jones Act, the Seventh Circuit specifically found that the riverboat was a "vessel." In unmistakable language, the Seventh Circuit stated, "To be precise, it is clear that *Players II* is a vessel. . . . " *Id.* at 856.[1]

In *Stewart II, supra,* a similar result was reached by the First Circuit relative to the plaintiff's vessel negligence claim. There, despite finding that a dredge, or scow, was not a vessel "in navigation" for purposes of the Jones Act, the First Circuit pointed out that, " . . . we need not labor over the 'vessel' status of the SUPER SCOOP or scow for purposes of the LHWCA . . . the LHWCA's definition of 'vessel' is significantly more inclusive than that used for evaluating seaman status under the Jones Act." *Id.* at 13. Most tellingly, the defendant conceded that the vessels at issue were, in fact, "vessels" for purposes of the LHWCA. *Id.*

It is well-settled that a vessel does not cease to be a vessel when she is not voyaging, but is at anchor, berthed, or at dockside, even when the vessel is undergoing repairs. *Chandris, supra, citing DiGiovanni v. Traylor Bros., Inc.*, 959 F.2d 1119, 1121 (1st Cir.) (en banc), *cert. denied*, 506 U.S. 827 (1992). Furthermore, a vessel is considered to be "in navigation," although moored to a dock, if it remains in readiness for another voyage. *Chandris, supra, citing 2 M. Norris, Law of Seamen*, 30.13, p. 364 (4th ed. 1985). Moored casino vessels remain "in navigation" and their non-navigational crew members, such as bartenders and waitresses, qualify as Jones Act seamen as long as those

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[1] The plaintiffs in *Howard* only sought damages under the Jones Act. They did not seek alternative claims for "vessel" negligence as did Martin. Consequently, the issue of vessel negligence was not before the court on appeal.

vessels remain operational. *Wiora v. Harrah's Illinois Corporation*, 68 F.Supp.2d 988 (N.D.Ill. 1999); *Lara v. Harvey's Iowa Management Co.*, 109 F.Supp.2d 1031 (S.D. Iowa 2000); *see also Greer v. Continental Gaming Co.*, 5 S.W.3d 559 (Mo. App. 1999) (a housekeeper on a river boat casino, moored for four months on account of low water, still entitled to Jones Act status).

Moreover, defendants still owe a duty of reasonable care to Martin even on a dead ship according to *West v. U.S.*, 361 U.S. 118 (1959). A negligent breach of that duty is actionable under the general maritime law. *Garris, supra.* The tort immunity provisions of the LWHCA and Louisiana's workers' compensation laws are inapplicable in the instance of a maritime tort/cause of action. *Chandris, supra; Thibodaux v. Atlantic Ritchfield*, 580 F.2d 841 (5th Cir. 1978); *Green v. Vermillion Corp.*, 144 F.3d 332 (5th Cir. 1998).

Prior to April 1, 2001, the defendants admit that Martin was a Jones Act seamen and treated her as such. In fact, the M/V TREASURE CHEST CASINO previously has been held to be a Jones Act vessel and several of its non-navigational crew, including Martin, afforded seaman's status and seaman remedies, albeit before the passage of "dockside gaming." *See Williams v. Treasure Chest Casino, LLC*, 1998 AMC 1300 (E.D.La. 1998). At the time of Martin's injury and continuing to date, the M/V TREASURE CHEST CASINO was and remains a fully operational, passenger vessel, clearly satisfying 1 U.S.C. § 3, this Court's interpretation in *Chandris, supra,* and the courts' holdings in *Stewart II, Howard, and McCarthy, supra.*

Martin submits that the Fifth Circuit clearly erred (1) by ruling that the M/V TREASURE CHEST CASINO was not a vessel "in navigation" for purposes of the Jones Act, and therefore not a "vessel" for purposes of the general maritime law, and (2) by ignoring the dictates of 1 U.S.C. § 3 and relying upon a non-uniform state statute, rather than simply looking at the vessel's residual capacity, in determining vessel status under the general maritime law. The Fifth Circuit's decision should be reversed.

II. The Fifth Circuit erred by applying a "putative" vessel analysis to this conventional vessel case. This Court should resolve the legal standard as to when, if at all, an admiralty court should apply a "putative" vessel analysis to a conventional vessel case.

Martin submits that since the M/V TREASURE CHEST CASINO is a conventional vessel, a conventional vessel analysis, as opposed to a putative vessel analysis, should have been undertaken to determine its vessel status. Under these circumstances, the Fifth Circuit erred as a matter of law in relying upon the putative vessel cases of *Pavone v. Mississippi Riverboat Amusement Corp.*, 52 F.3d 560 (5th Cir. 1995) (platform case), *Ducrepont v. Baton Rouge Marine Enterprises, Inc.*, 877 F.2d 393 (5th Cir. 1989) (platform case), and *Manuel v. P.A.W. Drilling & Well Service, Inc.*, 135 F.3d 344 (5th Cir. 1998) (special purpose structure case) in determining the vessel status of the M/V TREASURE CHEST CASINO and therefore, its decision should be reversed. If this Court decides that the Fifth Circuit was not in error in applying the *Pavone* line of cases, this Court's decision in *Stewart I* should control

the future course of the present case as it relates to Martin's Jones Act claim.

In *Pavone, supra,* the Fifth Circuit was called upon to decide the narrow issue of whether a barge that was originally constructed to be a floating restaurant and bar and later converted into a casino was a **"putative vessel"** for Jones Act purposes. The analysis undertaken by the Court focused on the time of the alleged injury, assuming that "the subject craft was built and used for nonvessel purposes, was moored other than temporarily to the bank, and either had been 'withdrawn from navigation' or was being used as a 'work platform,' or both." *Pavone* at 568. In adopting this approach, the Court expressed concern over whether too broad of an approach would come back to haunt future Courts in the context of whether these very same floating platforms or work flats would be Jones Act vessels for purposes of accidents occurring while they were being towed to a new location or to a shipyard or drydock for work or repairs or to sheltered waters in avoidance of hurricanes. *Pavone* at 568, footnote 23.

In relying upon its earlier decisions in *Gremillion v. Gulf Coast Catering, Inc.,* 904 F.2d 290, 293 (5th Cir. 1990) and *Bernard v. Binnings Construction Co.,* 741 F.2d 824 (5th Cir. 1984), the Fifth Circuit stated that "[a]s a general principle, where the vessel status of an **unconventional craft** is unsettled, it is necessary to focus upon the 'purpose for which the craft is constructed and the business in which it is engaged.'" *Pavone* at 569-70. "The caselaw is heavily skewed in favor of conferring such status upon craft whose primary mission is the transportation of cargo, equipment, or passengers over navigable waters. The greater the structure's resemblance to conventional

seafaring craft, the greater the odds of securing vessel status. *Gremillion, supra,* at 293.

A survey of the caselaw by the *Gremillion* Court demonstrated three common attributes for **unconventional crafts, or nonvessels,** the first one being most important for the present facts:

(1) The **structure** is **constructed to be used primarily as a work platform;**

(2) The **structure** is moored or otherwise secured at the time of the accident;

(3) Although the **platform** is capable of movement, and is sometimes moved across navigable waters in the course of normal operations, any transportation function is merely incidental to the **platform's** primary purpose.

In denying Jones Act vessel status to the Q/B MINDY, the *Gremillion* Court highlighted that the craft did not transport cargo or passengers, it was not designed for navigation, it was not engaged in navigation at the time of the injury, and the motive power was provided externally through towboats, as it had no engines, rudders, or navigational equipment (except lights). It was not registered with the Coast Guard as a vessel. Although transportable, the significance of its transportation function was found to be purely incidental to its primary function of providing living quarters to workers in relatively shallow waterways. The Court therefore found that the shoreside quarterbarge did not qualify as a Jones Act vessel, "as the craft fairly falls within the family of nonvessels styled 'floating work platforms.'" *Gremillion* at 294.

The *Pavone* Court determined that the subject barge had never been used as a seagoing vessel to transport passengers, cargo, or equipment across navigable waters. Neither was it constructed to do so. The barge was constructed to be the floating site of a restaurant and bar. From its inception until it was converted into a floating casino, the barge was moved only once during normal operations to avoid the threat of a hurricane, which one time movement was considered purely incidental to the barge's primary purpose of physically supporting a dockside casino structure. Nor did the barge employ a navigational or nautical crew. Thus, it was found that this indefinitely moored, shoreside, floating casino was a nonvessel for Jones Act purposes. *Id.* at 570.

The present facts are vastly different from those in *Pavone* and *Gremillion, supra,* and Martin respectfully submits that, as such, a putative vessel analysis by the Fifth Circuit in the present case was in error. To make the analysis iron-clad, Martin will point out the obvious distinctions between the M/V TREASURE CHEST CASINO and the work platforms in *Pavone* and *Gremillion.*

First and foremost, the M/V TREASURE CHEST CASINO was **not** originally built to be a "work platform" with its "primary purpose" to function "as an indefinitely moored floating casino," as defendants suggest. Incidentally, the vessel enjoys a "continuously moored" status, as opposed to a "permanently moored" status, with the Coast Guard. Rather, the M/V TREASURE CHEST CASINO was originally built, and is still being used, as a Coast Guard licensed, inspected, passenger carrying riverboat, albeit presently tied to the dock during gaming operations. The defendants have done nothing affirmatively to withdraw the M/V TREASURE CHEST CASINO from navigation.

See St. Paul Fire and Marine Ins. Co. v. Gulfside Casino Partnership d/b/a COPA CASINO, 2002 AMC 143 (S.D. Miss., Nov. 20, 2001) (a casino vessel once considered "in navigation," was subsequently reconstructed as a permanently moored vessel – its power plant and navigational gear has been disabled for at least 10 years; it is not self-propelled, and therefore, cannot be moved except by tug boats). *See also United States v. Ex-USS Cabot/Dedalo*, 297 3d 378 (5th Cir. 2002) ("permanently moored" vessel was decommissioned, moth-balled, had its screws removed, had her engines winterized, and the ship was stripped of most of her operational equipment).

Additionally, the M/V TREASURE CHEST CASINO has all of her vessel features which were found to be missing in *Pavone*, namely diesel engines, self-propulsion, master, navigational aids, crew quarters, a fully operational pilot house, steering mechanism, life-saving equipment, and navigational or nautical crew – all of which remain fully functional on the M/V TREASURE CHEST CASINO. In fact, unlike the work platforms in *Pavone* and *Gremillion*, the M/V TREASURE CHEST CASINO, with its passengers, cargo and equipment, has sailed under its own power hundreds, if not thousands, of times upon the navigable waters of the United States since it was first placed into service in 1994.

III. Martin satisfies *Chandris* for Jones Act seaman status

It has been well-settled that a seaman need not contribute to the navigational function of the vessel to qualify as a Jones Act seaman. *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 355 (1991). The only two requirements for seaman

status are that (1) an employee's duties must contribute to the function of the vessel or to the accomplishment of its mission; and (2) that employee must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature. *Harbor Tug and Barge Company v. Papai*, 520 U.S. 548 (1997); *Chandris, supra*.

To satisfy the first prong of the *Chandris* test, the seaman must only show that he/she "does the ship's work." *Chandris*, 515 U.S. at 368, citing *Wilander*, 498 U.S. at 355; *Becker v. Tidewater, Inc., et al.*, 335 F.3d 376 (5th Cir. 2003); *See also In re Endeavor Marine, Inc.*, 234 F.3d 287, 290 (5th Cir. 2000). Since 1995, Martin's entire employment has been spent working aboard the M/V TREASURE CHEST CASINO. In fact, Martin was recently presented with her eight-year pin in recognition of her service aboard the M/V TREASURE CHEST CASINO. It is undisputed that Martin's duties contributed to the function and the mission of the M/V TREASURE CHEST CASINO. Thus, she clearly satisfies the first prong of *Chandris*.

With regard to the second prong of the *Chandris* test, "If it can be shown that the employee performed a significant part of his work on board the vessel on which he was injured, with at least some degree of regularity and continuity, the test for seaman status will be satisfied." *Chandris*, 515 U.S. at 355 (citations omitted). As the Court explained, "[t]he duration of a worker's connection to a vessel and the nature of the worker's activities taken together, determine whether a maritime employee is a seaman because the ultimate inquiry is whether the worker in question is a member of the vessel's crew or simply a land-based employee who happens to be working on the vessel at a given time." *Chandris*, 515 U.S. at 370

(citations omitted). *See also In re Endeavor Marine, supra,* where the Fifth Circuit made clear that a seaman need not literally "go to sea" to qualify as a Jones Act seaman. It is sufficient that he is "subject to the perils of the sea." Put differently, the determination of whether Martin was a seaman under this second prong turns on whether there is sufficient evidence to conclude that Martin was substantially connected to the M/V TREASURE CHEST CASINO. *Becker, supra,* at 13-14. "While seaman status is not simply a temporal concept, the amount of time a worker spends aboard a vessel in navigation is helpful in determining if that worker has attained seaman status. . . . After *Chandris*, this circuit reaffirmed the 30-percent rule. In *Nunez v. B&B Dredging, Inc.*, 288 F.3d 271, 277 (5th Cir. 2002), it was held that because the plaintiff spent only approximately 10% of his work time aboard a vessel in navigation, he did not qualify for seaman status as a matter of law." *Becker, supra,* at 14-15, fn. 7. It is undisputed that Martin spent 100% of her work time aboard the M/V TREASURE CHEST CASINO.

Regarding the perilous nature of maritime employment, fire remains the most feared peril aboard the M/V TREASURE CHEST CASINO, irrespective of whether it is dockside, given the limited egress from the vessel, the volatility and combustibility of the 15,000 to 20,000 gallons of stored diesel fuel, and the close quarters of the vessel itself. Unlike a land-based casino which simply does not store diesel fuel and which may have many ways to escape during a fire, the M/V TREASURE CHEST CASINO has very few ways off the vessel. One need only be reminded of the loss of life which occurred on the Waterman lash vessel STONEWALL JACKSON in 1991 when a flash fire erupted in the engine room, engulfing the engine

room in flames in a matter of seconds, depriving it of oxygen, and killing all six members of the engineering department, to realize that, even while docked, the seamen aboard these vessels face very real and extreme maritime perils. *See In re Waterman S.S. Corp.*, 794 F.Supp. 601 (E.D.La. 1992).

CONCLUSION

This Court should grant the petition for a writ of certiorari in this conventional vessel case and restore the harmony and uniformity of the general maritime law to the lower courts.

Respectfully submitted,

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Mary MARTIN, Plaintiff-Appellant, VERSUS BOYD GAMING CORP., doing business as Treasure Chest Casino MV; TREASURE CHEST CASINO, LLC., Defendants-Appellees.

No. 03-30389, Consolidated with 30-30459

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

374 F.3d 375; 2004 U.S. App. LEXIS 14099

July 8, 2004, Filed

JUDGES: Before DAVIS, PRADO and PICKERING, Circuit Judges.

OPINION BY: W. EUGENE DAVIS: Mary Martin appeals the district court's order granting summary judgment to her employer

OPINION: W. EUGENE DAVIS:

Mary Martin appeals the district court's order granting summary judgment to her employer, Boyd Gaming Corporation, dismissing Martin's *Jones Act* suit on the ground that she was not a seaman because the floating casino upon which she worked was not a vessel. We affirm.

I.

Mary Martin worked as a cocktail waitress on the TREASURE CHEST CASINO (TREASURE CHEST) from February 6, 1995 until October 7, 2001 when she slipped and fell in grease or cooking oil on the loading dock of the TREASURE CHEST. The TREASURE CHEST is a riverboat casino which was built in 1994 as a replica of a 19th Century paddle-wheel steamer. The

TREASURE CHEST is approximately 213 feet in length, paddle-wheel driven, and carries a valid certificate of inspection from the United States Coast Guard. Before the 2001 Louisiana legislative session, the TREASURE CHEST conducted gaming cruises from September 1994 until March 31, 2001 on Lake Pontchartrain. During the 2001 legislative session, the Louisiana legislature abolished the cruise requirement for all riverboat casinos to take effect on April 1, 2001. Beginning April 1, 2001, approximately six months before plaintiff's injury, the TREASURE CHEST conducted gaming activities only while moored. After April 1, 2001 the TREASURE CHEST only moved from her mooring on Lake Pontchartrain on two occasions, in June 2002, to allow for maintenance dredging of her berth.

Relying primarily on *Pavone v. Mississippi Riverboat Amusement Corp.*, 52 F.3d 560 (5th Cir. 1995), the defendant moved for summary judgment on grounds that the TREASURE CHEST was not a "vessel in navigation" at the time of plaintiff's injury and plaintiff therefore lacked the employment related connection to a vessel to qualify as a *Jones Act* seaman. The district court agreed and dismissed plaintiff's suit.

II.

This case is controlled by *Pavone v. Mississippi Riverboat Amusement Corp.*, 52 F.3d 560 (5th Cir. 1995). In that case we considered whether the BILOXI BELLE – a 217 foot long floating gambling casino located on the Mississippi gulf coast and moored to shore by lines tied to sunken steel pylons – was a vessel in navigation. The owner of the BILOXI BELLE maintained a towing contract with a

towing company to supply the equipment, facilities and expertise to tow the BILOXI BELLE to sheltered waters in the event threatening weather was forecast. The BILOXI BELLE was in fact towed to sheltered waters on at least one occasion when a hurricane threatened. The BILOXI BELLE never conducted gaming operations except in its stationery moored position.

Martin argues that *Pavone* does not control this case because, unlike the BILOXI BELLE, the TREASURE CHEST was designed and constructed as a vessel and sailed on Lake Pontchartrain for six years before the April 2001 legislation was enacted. We disagree. The rule has never been "once a vessel, always a vessel." Like the barge in *Ducrepont v. Baton Rouge Marine Enterprises, Inc.*, 877 F.2d 393 (5th Cir. 1989), once the TREASURE CHEST was withdrawn from navigation so that transporting passengers, cargo or equipment on navigable water was no longer an important part of the business in which the craft was engaged, the craft was not a vessel. *See also, Manuel v. P.A.W. Drilling & Well Service, Inc.*, 135 F.3d 344, 347 (5th Cir. 1998). Applying these principles to the summary judgment evidence in this case, it is clear the TREASURE CHEST had no transportation function in the performance of its function as a gambling casino. After April 1, 2001, the TREASURE CHEST was securely moored during all gaming activity conducted by her customers.

The district court correctly concluded that *Pavone* controls this case and correctly granted summary judgment.[1]

AFFIRMED.

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[1] As part of its memorandum in opposition to defendant's summary judgment motion, plaintiff moved to amend her complaint to assert a claim against the employer under the general maritime law. The district court correctly denied that motion as futile. We agree with the district court that because the TREASURE CHEST is not a vessel in navigation under the *Jones Act* it is likewise not a vessel under the general maritime law foreclosing either a general maritime law claim or a § 905(b) claim. *See Ducrepont v. Baton Rouge Marine Enterprises, Inc.*, 877 F.2d 393, 396 (5th Cir. 1989). *See also, Boomtown Belle Casino v. Bazor*, 313 F.3d 300, 304 (5th Cir. 2002).

**MARY MARTIN VERSUS
BOYD GAMING CORPORATION, ET AL**

CIVIL ACTION NO. 02-3010 SECTION "F"

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

252 F. Supp. 2d 321; 2003 U.S. Dist. LEXIS 5116

**March 25, 2003, Decided
March 26, 2003, Filed, Entered**

COUNSEL: For MARY MARTIN, plaintiff: Eric Michael Daigle, Eric M. Daigle Attorney at Law, New Orleans, LA.

For BOYD GAMING CORPORATION, TREASURE CHEST CASINO, LLC, defendants: James Melvin Jacobs, John Herr Musser, V, Murphy, Rogers & Sloss, New Orleans, LA.

For TREASURE CHEST CASINO, LLC, defendant: Peter Brooks Sloss, Murphy, Rogers & Sloss, New Orleans, LA.

JUDGES: MARTIN L. C. FELDMAN, UNITED STATES DISTRICT JUDGE.

OPINION BY: MARTIN L. C. FELDMAN

OPINION:

ORDER AND REASONS

Before the Court is defendants' Motion for Summary Judgment. For the reasons that follow, the motion is GRANTED.

Background

Mary Martin seeks damages under the Jones Act, 46 U.S.C. § 688, for unseaworthiness of the M/V TREASURE CHEST CASINO (TREASURE CHEST) and for the defendants' negligence, for injuries she sustained on October 7, 2001, when she slipped and fell in grease or cooking oil which had leaked from garbage bags on the loading dock of the TREASURE CHEST. As a result of the accident, the plaintiff asserts that she has sustained permanent injuries to her neck, back, and arms. She seeks damages for past, present, and future lost wages, medical expenses, lost fringe benefits, pain and suffering, mental anguish, loss of ability to enjoy life, and disability.

Martin worked as a cocktail waitress on the TREASURE CHEST from February 6, 1995, until October 7, 2001, when she had her accident. The TREASURE CHEST is a riverboat casino which was built in 1994 to replicate a 19th century Louisiana steamboat. The TREASURE CHEST is 213.5 feet in length, paddlewheel driven, and carries a valid Certificate of Inspection from the United States Coast Guard. Pursuant to the cruise requirement for all riverboat casinos in Louisiana, which was in effect prior to the 2001 Louisiana legislative session, the TREASURE CHEST conducted gaming cruises from September 1994 until March 31, 2001. During the 2001 legislative session, the Louisiana legislature abolished the cruise requirement for all riverboat casinos, to take effect on April 1, 2001, in exchange for increased franchise fees from the casino operators. As of April 1, 2001, before plaintiff's injury, the TREASURE CHEST has conducted continuous gaming activities only while moored. Since April 1, 2001, the TREASURE CHEST has

only moved from her mooring on Lake Pontchartrain for maintenance purposes on two evenings in June of 2002.[1]

I. Standard for Summary Judgment

Federal Rule of Civil Procedure 56 instructs that summary judgment is proper if the record discloses no genuine issue as to any material fact such that the moving party is entitled to judgment as a matter of law. No genuine issue of fact exists if the record taken as a whole could not lead a rational trier of fact to find for the non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio.*, 475 U.S. 574, 586, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986). A genuine issue of fact exists only "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986).

The Court emphasizes that the mere argued existence of a factual dispute does not defeat an otherwise properly supported motion. *See id.* Therefore, "if the evidence is merely colorable, or is not significantly probative," summary judgment is appropriate. *Id.* at 249-50 (citations omitted). Summary judgment is also proper if the party opposing the motion fails to establish an essential element of his case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). In this regard, the non-moving party must do more than simply deny the allegations raised by the moving party. *See Donaghey v. Ocean Drilling & Exploration Co.*, 974 F.2d 646, 649 (5th

[1] On June 4 and 5, 2002, the TREASURE CHEST closed for several hours each night and was moved approximately 200 feet from its moored location to allow for maintenance dredging at the berth. There were no patron, games dealers or cocktail waitresses aboard during these dredging operations.

Cir. 1992). Rather, he must come forward with competent evidence, such as affidavits or depositions, to buttress his claims. *Id.* Hearsay evidence and unsworn documents do not qualify as competent opposing evidence. *Martin v. John W. Stone Oil Distrib., Inc.,* 819 F.2d 547, 549 (5th Cir. 1987). Finally, in evaluating the summary judgment motion, the Court must read the facts in the light most favorable to the non-moving party. *Anderson,* 477 U.S. at 255.

II. Application

The Jones Act confers a negligence cause of action on "any seaman who shall suffer personal injury in the course of his employment. . . ." 46 U.S.C. § 688(a). "Seaman" is left undefined in the statute. The United States Supreme Court has established two essential requirements for seaman status: (1) the employee's duties must contribute to the function of the vessel or the accomplishment of its mission and (2) the employee must establish that she has an "employment-related connection to a vessel in navigation" that is "substantial in terms of its nature and duration." *Chandris, Inc. v. Latsis,* 515 U.S. 347, 368, 115 S. Ct. 2172, 2190, 132 L. Ed. 2d 314 (1995). The Supreme Court articulated the purpose underlying the second prerequisite in *Chandris*:

> The fundamental purpose of the substantial connection requirement is to give full effect to the remedial scheme created by Congress and to separate the sea-based maritime employees who are entitled to *Jones Act* protection from those land-based workers who have only a transitory or sporadic connection to a vessel in navigation, and therefore whose employment does not regularly expose them to the perils of the sea.
>
> *Id.*

Importantly, the Supreme Court in *Chandris* focused on "the essence of what it means to be a seaman," noting that "the *Jones Act* remedy is reserved for sea-based maritime employees whose work regularly exposes them to 'the special hazards and disadvantages to which they who go down to sea in ships are subjected.'" *Id. at* 370 (citation omitted).

At the heart of this seaman status dispute is the issue of whether the TREASURE CHEST is a vessel "in navigation." The plaintiff asserts that she [sic] entitled to seaman status because the TREASURE CHEST remains a vessel in navigation, although it is continuously moored, because it has the ability to conduct gaming cruises. The defendants contend that the TREASURE CHEST no longer is a vessel in navigation because it ceased conducting gaming cruises in April 2001, following the legislature's statutory authorization of dockside gaming. Because the TREASURE CHEST no longer conducts, or intends to conduct gaming cruises, the defendants assert that the plaintiff lacks the employment-related connection to a vessel in navigation mandated in *Chandris* to qualify as a *Jones Act* seaman. The Court agrees.

In *Pavone v. Mississippi Riverboat Amusement Corp.*, the Fifth Circuit considered whether the BILOXI BELLE, an indefinitely moored floating dockside casino, constituted a vessel under the *Jones Act* or general maritime law. 52 F.3d 560 (5th Cir. 1995). Relying on the "semi-permanently or indefinitely moored" status of the barge supporting the BILOXI BELLE, the Fifth Circuit held that, at the times of the plaintiffs' alleged accidents, the BILOXI BELLE was removed from navigation and constituted a mere "work platform." *Id. at* 570. Indeed, the

Court reiterated the three common attributes of nonvessels: (1) the structure was constructed to be used as a work platform; (2) the structure is moored or otherwise secured at the time of the accident; and (3) although the platform is capable of movement, and is sometimes moved across navigable waters in the course of normal operations, any transportation function is merely incidental to the platform's primary purpose." *Id. at* 570 (citing *Gremillion v. Gulf Coast Catering Co.,* 904 F.2d 290, 293-94 (5th Cir. 1990). Ultimately, the Fifth Circuit's analysis of putative vessels included, not only vessels used as work platforms, but also vessels that had been "withdrawn from navigation." *Id.* at 568. Importantly, it noted that the BILOXI BELLE was susceptible of being moved and was moved once after being converted into a casino but that such "one-time movement was purely incidental to the barge's primary purpose of physically supporting a dockside casino structure." *Id.*

Additionally, in *Ducrepont v. Baton Rouge Enterprises, Inc.,* 877 F.2d 393, 395 (5th Cir. 1989), the appeals court wrote that the barge at issue was originally built to navigate and was used in navigation, but had ceased to navigate and therefore no longer constituted a vessel "in navigation" for *Jones Act* purposes. This Court inescapably notes that the TREASURE CHEST was also built to navigate, but ceased its transportation function on April 1, 2001, well before plaintiff's accident, and has moved only for maintenance purposes on two occasions. Such limited movement, was clearly incidental to TREASURE CHEST's primary function as a floating, but stationary, gambling casino. This "extremely limited transportation function is 'subordinate to its contrasting function' of providing dockside gaming." *Gremillion v. Gulf Coast Catering, Inc.,*

904 F.2d 290, 294, n. 9 (5th Cir. 1990). Moreover, the defendants' two-year history of compliance and intent to comply with Louisiana law, its Coast Guard Certificate of Inspection reflecting a "continuously moored" status, and intent to remain moored while engaging in its primary function of casino gambling is also telling. *See id. at* 293 ("[T]he intention of the owner to move the structure on a regular basis . . . and the length of time that the structure has remained stationary are also relevant to the inquiry").[2]

Accordingly, defendants' motion for summary judgment on seaman status is GRANTED.

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[2] The plaintiff cites *Dalleo v. Treasure Chest Casino, LLC,* C.A. No. 02-0229 (E.D. La. Nov. 21, 2002) as presenting the identical issue presented to this Court for summary judgment. Indeed, the same defendants moved for summary judgment on seaman status in that case, where the plaintiff was a games dealer on the TREASURE CHEST and was injured approximately a month prior to Martin. Although the defendants' motion was denied, Judge Fallon never assigned reasons for his decision. The case was ultimately settled and therefore the issue was never resolved on the merits. Moreover, the issues raised in some of the briefing in *Dalleo* have not been raised in this case and are not before the Court. In addition, the Court finds that the other cases cited by plaintiff are distinguishable from the facts of this case. Specifically, the cases cited by the plaintiff do not involve a casino vessel that has ceased to navigate. Instead, all of the vessels in the cases cited routinely left their docks to conduct various voyages.

MARY MARTIN, Plaintiff-Appellant v. BOYD GAMING CORP, doing business as Treasure Chest Casino MV; TREASURE CHEST CASINO LLC, Defendants-Appellees

No. 03-30389 Consolidated with 03-30459

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

2004 U.S. App. LEXIS 17140

August 6, 2004, Filed

COUNSEL: For MARY MARTIN, Plaintiff-Appellant (03-30389): Eric Michael Daigle, Law Office of Eric M Daigle, New Orleans, LA.

For BOYD GAMING CORP dba Treasure Chest Casino MV, TREASURE CHEST CASINO LLC, Defendants-Appellees (03-30389): Peter Brooks Sloss, James M Jacobs, Murphy, Rogers & Sloss, New Orleans, LA.

JUDGES: Before DAVIS, PRADO and PICKERING, Circuit Judges.

OPINION BY: W. Eugene Davis

OPINION:

ON PETITION FOR REHEARING

PER CURIAM:

IT IS ORDERED that the petition for rehearing is denied.

ENTERED FOR THE COURT:

W. Eugene Davis

United States Circuit Judge

LOUISIANA REVISED STATUTES
TITLE 27. LOUISIANA GAMING CONTROL LAW
CHAPTER 4. THE LOUISIANA RIVERBOAT ECONOMIC DEVELOPMENT AND GAMING CONTROL ACT PART V.
CONDUCTING OF GAMING OPERATIONS

La. R.S. 27:65 (2004)

§ 65. Licenses to conduct gaming activities upon riverboats; limitations

A. Notwithstanding any other provisions of law to the contrary, upon application properly submitted and examined, the division may issue up to fifteen licenses to conduct gaming activities on a riverboat, in accordance with the provisions of this Chapter. No more than six licenses may be granted for the operation of gaming activities on riverboats for operation from any one designated waterway.

B. Gaming shall be conducted aboard riverboats, subject to the following requirements:

(1)(a) In the parish of the official gaming establishment, except as provided in R.S. 27:66, no gaming may be conducted while a riverboat is docked, unless the vessel is docked for less than forty-five minutes between excursions. However, should the master of the riverboat reasonably determine and certify in writing that the weather conditions or the water conditions are such that those conditions, which the master shall specify, present a danger to the riverboat, its passengers, and crew, then the riverboat may remain docked and gaming may take place until such time as the master determines that those conditions have sufficiently diminished to proceed or until the duration of the authorized excursion has expired. A

riverboat gaming licensee authorized to conduct gaming pursuant to this Subparagraph shall pay the franchise fee provided in R.S. 27:91(C)(1) and shall pay either the additional franchise fee provided in R.S. 27:91(C)(2) or, if applicable and authorized by R.S. 27:66, the additional franchise fee in the amount provided in R.S. 27:91(C)(4).

(b) For the purposes of this Chapter, on or after September 15, 1993, in any parish which borders the Red River beginning five miles south of the Kansas City Southern Company/Louisiana Arkansas Crossing Railroad Bridge in Rapides Parish and ending five miles north of the Mid-South Company Railroad Bridge in Caddo Parish, gaming shall only be conducted while a riverboat is docked and no cruises or excursions shall be conducted. A riverboat gaming licensee authorized to conduct gaming while a riverboat is docked pursuant to this Subparagraph shall pay the franchise fee in the amount provided in R.S. 27:91(C)(1) and the additional franchise fee in the amount provided in R.S. 27:91(C)(3).

(c) For all licensees other than those licensed pursuant to R.S. 27:65(B)(1)(a) or (b), gaming may only be conducted on a riverboat while it is docked and the licensee shall not conduct cruises or excursions. A riverboat gaming licensee authorized to conduct gaming on a riverboat while it is docked pursuant to this Subparagraph shall pay the franchise fee in the amount provided in R.S. 27:91(C)(1) and the additional franchise fee in the amount provided in R.S. 27:91(C)(2).

(2) Riverboat cruises shall be not less than three nor more than eight hours in duration for a round trip, should the licensee offer or be required to offer, excursions while conducting gaming activities, with the exception of any

extended excursions, each of which shall be expressly approved by the commission.

(3) Agents of the division may be on board at any time during gaming operations for the purpose of determining compliance with the provisions of this Chapter.

(4) Gaming devices, equipment, and supplies customarily used in conducting gaming, must be purchased or leased only from suppliers permitted for such purpose under this Chapter.

(5) Licensees shall permit no form of wagering on games except as permitted by this Chapter, and the rules of the division.

(6) Gaming may only take place in the designated gaming area while the riverboat is upon a designated river or waterway.

(7) Gaming equipment may not be possessed, maintained, or exhibited by a person on a riverboat except in the designated gaming area, or a secure area used for inspection, repair, or storage of the equipment and specifically designated for that purpose.

(8) Wagers may be received only from a person present on a licensed riverboat.

(9) A person under age twenty-one shall not be permitted in the designated gaming area of a riverboat.

(10) Gaming is permitted only on the rivers described in R.S. 27:43.

(11) Except for racehorse wagering and the play of slot machines, gaming wagers may be made only with tokens, chips, vouchers, coupons, or electronic cards issued

by the licensee. Such tokens, chips, vouchers, coupons, or electronic cards may be used while aboard the riverboat only for the purpose of making wagers on gaming games. Electronic cards may be used which are affixed with a magnetic storage media, a "smart card" or those containing an integrated circuit chip, but excluding credit cards issued by any other entity or institution.

(12) Licensees must use only those docking facilities and routes for which they are licensed and may only board and discharge passengers at the riverboat's licensed berth.

(13) Licensees must have adequate protection and indemnity insurance, as determined by the commission, at all times during operation of a riverboat.

(14) Licensees and riverboats must have all necessary federal and state licenses, certificates, or other regulatory approvals prior to operating a riverboat.

(15) In addition to the above, gaming must be conducted in accordance with all the terms of the license, the requirements set forth in this Chapter, and rules and regulations adopted by the division and the commission.

La. R.S. 27:66 (2004)

§ 66. Gaming while a riverboat is docked in the parish of the official gaming establishment

A. Notwithstanding any provision in this Chapter to the contrary, for purposes of this Section any riverboat licensed to conduct gaming in the parish of the official gaming establishment, except as provided in Subsection B of this Section, shall not be permitted to conduct gaming

while docked and shall be required to conduct cruises and excursions as provided in R.S. 27:65(B)(1) as in effect January 1, 1997, and shall, in addition, meet the requirements of R.S. 27:44(4) and R.S. 27:44(23)(c) and (d) as in effect January 1, 1997.

B. Notwithstanding any provision in this Chapter to the contrary, the provisions of R.S. 27:65(B)(1)(c) and 66 shall apply to not more than one licensed riverboat at any time which must be located on Lake Pontchartrain in the parish of the official gaming establishment as defined in R.S. 27:203 and 205(26) if and only if:

(1) Such riverboat conducts gaming activities in an area not exceeding thirty thousand square feet in the aggregate;

(2) The owner or operator of such riverboat does not participate directly or indirectly in the ownership, construction, operation, or subsidization of any hotel of a size exceeding three hundred ninety-nine guest rooms within a distance of one mile from the berthing area of the licensed riverboat; and

(3) Such riverboat does not maintain or offer for patron or public use on the vessel or at its terminal, berthing area, or any hotel referred to above, more than eight thousand square feet of restaurant facilities in the aggregate, exclusive of food preparation and handling area.

C. In the event the riverboat referred to in Subsection B of this Section violates any of the restrictions set forth in Paragraphs (1), (2), and (3) of Subsection B of this Section, no gaming may be conducted as long as such violation continues.

D. Notwithstanding the provisions of Subsections B and C of this Section, if the official gaming establishment is not subject to the Amended and Renegotiated Casino Operating Contract among the state of Louisiana by and through the Louisiana Gaming Control Board, Harrah's Jazz Company and Jazz Casino Company, L.L.C., effective as of October 30, 1998, as amended, and is not subject to any other casino operating contract as defined in R.S. 27:205(6) which contains exclusivity provisions in accordance with R.S. 27:201 et seq., any riverboat licensed in the parish of the official gaming establishment may conduct gaming activities in compliance with the provisions of Subsection B of this Section without adhering to the restrictions set forth in Paragraphs (1) through (3) of Subsection B of this Section.

E. A riverboat gaming licensee authorized to conduct gaming while the riverboat is docked in the parish of the official gaming establishment shall be subject to all other applicable provisions of law, rules, and regulations which govern riverboat gaming, not inconsistent with the provisions of this Section.